

(2005) 07 OHC CK 0041
In the Orissa High Court
Case No : Writ Petition (C) No.8378 of 2005

Ghanashyam Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Orissa Municipal Act, 1950 — Section 3(16), 399, 400, 74
Orissa Municipal Rules, 1953 — Rule 392, 394, 396, 397, 398

Citation : (2005) 2 OLR 526

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Prafulla Kumar Rath, R.C. Jena, P.K. Satpathy, R.N. Parija and A.K. Rout, for the Appellant; Pradipta Kumar Mohanty, Addl. Govt. Adv, for the Respondent

Judgement

1. Heard Mr. P. K. Rath, learned counsel for the petitioner, and learned Additional Government Advocate.
2. By means of this writ petition, the petitioner has challenged the decision of the Orissa Administrative Tribunal, Cuttack Bench dated 29.06.2005 taken in O.A. No.863 of 2005 by which while rejecting the prayer for interim relief in O.A., the Tribunal has held that the Additional District Magistrate of a district can relieve the Executive Officer working in a Notified Area Council.
3. Normally, we do not interfere in the interim matters but seeing the circumstances of the case, we are inclined to interfere.
4. The petitioner was sent on deputation, as Executive Officer, to the Notified Area Council, Basudevpur in the district of Bhadrak, to which Orissa Municipal Act, 1950 applies. Vide order dated 30th April, 2005 passed by the Director, Municipal Administration and Ex-Officio Additional Secretary to the Government, the services of the petitioner were repatriated to his parent department, i.e., Finance Department. In pursuance thereof, the Additional District Magistrate,

Bhadrak vide his order dated 01.05.2005 relieved .the petitioner.

5. The repatriation order is under challenge before the Tribunal in the O.A. Along with the main prayer, an interim prayer was also made by the petitioner before the Tribunal on the ground inter alia that there is an elected Chairperson in the Notified Area Council and as such, the Additional District Magistrate has no jurisdiction to relieve the petitioner as he was not working under him. The Tribunal rejecting the plea of the petitioner has held that it found no illegality in relieve order passed by the Additional District Magistrate.

The posting of the petitioner was made in view of Section 74 of the Orissa Municipal Act in which it has been provided that the Executive Officer, Engineer and Health Officer shall be servants of the State Government appointed by the State Government to the Municipality on such conditions as may be prescribed and their work shall be subject to the general powers of supervision.of the Chairperson,

Learned Additional Government Advocate has shown the photostat copy of the note sheet where the Additional District Magistrate, Bhadrak had marked the order to the Collector by which the petitioner was asked to be relieved by handing over charge to Tahasildar which was approved by the Collector. He has further submitted that as per the definition of "Magistrate of the,district" given in Section 3(16), any Magistrate subordinate to the District Magistrate to whom the District Magistrate may delegate all or any of his powers under the Act is competent to pass orders. But here, the question is in a Municipality where the Executive Officer is directly under the control of its elected Chairperson, whether the Collector, District Magistrate or Additional District Magistrate or any other subordinate Officer of the district under the District Magistrate can interfere in the affairs of that Municipality and if it is permissible at which stage.

6. There is no doubt that Section 74 of the Act provides that every Municipality shall have an Executive Officer, an Engineer and a Health Officer, who shall be servants of the State Government appointed by the State Government to the Municipality on such conditions as may be prescribed and their work shall be subject to general powers of supervision of the Chairperson. There is also no doubt that the rules made under the Orissa Municipal Act namely Orissa Municipal Rules, 1953 provides regarding the payment of salary and administrative control. Rule 392 thereof provides that the State Government shall appoint an Executive Officer for the Municipality from amongst the Government employees under Chapter-VIII of the Orissa Service Code, as amended from time to time. Rule 394 provides that the pay, deputation allowance, dearness allowance, travelling allowance and conveyance allowance shall be made from the Municipal fund and shall be drawn by a salary bill. Rule 396 provides that leave salary and pensionary contributions of the Executive Officer shall be paid from the Municipal fund to the Government by the Council. As per Rule 397, the Chairperson is competent to grant casual leave but according to Rule 398 any other leave is to be sanctioned by the State

Government.

7. Nowhere we find the interference of the Collector or any subordinate officer to the Collector in the affairs of the Municipality. However, the District Magistrate has been empowered u/s 399, in cases of emergency, to direct to provide for execution of any work or doing of any act which a Municipality Chairperson or Executive Officer is empowered to execute or do. This situation had not arisen in the instant matter. Therefore, there was no occasion to invoke the powers u/s 399 of the Orissa Municipal Act. Section 400 of the aforesaid Act provides that if at any time it appears to the Government that a Municipality or its Chairperson or Executive Officer has made default in performing any duty imposed by or under this Act or any other Act, the Government may by an order in writing fix a period for performance of such duty and if such duty is not performed within the period so fixed, the State Government may appoint some person to perform it. Therefore, in a situation where an order is not complied with by a Municipality or its Chairperson or Executive Officer, after specifying the period and on its expiry, the State Government may direct any other person to perform the same. So, in such a situation, the State Government has full power to direct the District Magistrate or any other Officer to perform the duty to relieve a person who has been repatriated from the post of Executive Officer, but not before that.

8. In the instant matter, we find that there is no direction of the State Government to the District Magistrate or the Additional District Magistrate to perform any function including to relieve the petitioner from the post of Executive Officer and as such, the Additional District Magistrate had no jurisdiction to relieve the petitioner in the absence of any direction of the State Government.

9. In view of the above-mentioned facts and circumstances, the writ petition is allowed in part. The impugned order passed by the Tribunal is quashed. The impugned relieve order dated 01.05.2005 passed by the Additional District Magistrate in so far as it relates to the relieving of the petitioner only shall remain stayed during the pendency of the O.A.

10. We hereby make it clear that we have not considered" the merits of the case regarding the correctness or legality of the order of repatriation of the petitioner which is under challenge before the Tribunal in the above-mentioned O.A. and this order will not debar the competent authority from acting in accordance with the order of the Government. This order is confined only to the relieving of the petitioner by the Additional District Magistrate.

11. We expect from the Tribunal to decide the O.A. as expeditiously as possible preferably within a period of four months on priority basis.

Urgent certified copy of the order be granted as per rules.